

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kelly Services, Inc.,

Plaintiff

v.

A2Z Global Staffing, Inc. et al.,

Defendants

2:15-cv-01443-JAD-PAL

**Order Denying Motion
for Default Judgment**

[ECF 30]

Kelly Services, Inc. sues A2Z Global Staffing, Inc., and four of its employees and agents Daven Ricketts and Allan, Alexis, and Susan OKeefe, claiming that A2Z's failure to perform under a staffing agreement—and the individual defendants' intentional misrepresentations about that performance—cost Kelly nearly \$600,000.¹ Defaults have been entered against all defendants except Allan OKeefe. Kelly moves for a \$648,254.20 default judgment against these defaulted defendants.² Because Kelly's theories against the defaulted defendants overlap with the claims and legal theories against Allan OKeefe, Kelly's motion is premature under the *Frow* doctrine, and I deny it without prejudice.

Discussion

When the clerk has entered a default against a party, Rules 54(b) and 55 of the Federal Rules of Civil Procedure permit the court to enter a default judgment.³ However, the Ninth Circuit follows the time-honored *Frow* doctrine for considering default judgments in multi-defendant cases: "where a complaint alleges that defendants are jointly liable and one of them defaults, judgment should not be entered against the defaulting defendant until the matter has been adjudicated with regard to all

¹ ECF 1, 31.

² ECF 30.

³ *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

1 defendants.”⁴ The Ninth Circuit extends this doctrine to cases where the co-defendants are “similarly
2 situated” and defense of the claims will hinge on the same legal theory because “it would be
3 incongruous and unfair to allow a plaintiff to prevail against defaulting defendants on a legal theory
4 rejected by a court with regard to an answering defendant in the same action.”⁵

5 The essence of all claims in this case is A2Z’s failure to procure workers’ compensation
6 coverage and the individual defendants’ false representations that they had procured that coverage.⁶
7 The *Frow* doctrine cautions against entering a default judgment against the defaulted defendants
8 while Allan O’Keefe continues to defend against this legal theory. For this reason, I deny plaintiff’s
9 motion for a default judgment against the defaulted defendants without prejudice to its ability to
10 reurge this request after the claims against Allan O’Keefe have been resolved.

11 Conclusion

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Entry of Judgment
13 Against Defendants A2Z Global Staffing, Inc., Alexis J. O’Keefe, Susan M. O’Keefe, and Daven
14 Ricketts [ECF 30] is **DENIED** without prejudice.

15 Dated this 26th day of February, 2016.

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17 Jennifer A. Dorsey
18 United States District Judge
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25 ⁴ *In re First T.D. & Inv., Inc.*, 253 F.3d 520, 532 (9th Cir. 2001) (citing *Frow v. De La Vega*, 82
26 U.S. 552 (1872)).

27 ⁵ *Geramendi v. Henin*, 683 F.3d 1069, 1082–83 (9th Cir. 2012) (quotation omitted).

28 ⁶ ECF 1.